

EN BANC CALENDAR
Before the Minnesota Supreme Court

September 2005

SUMMARY OF ISSUES

Summaries prepared by the Supreme Court Commissioner's Office

Tuesday, September 6, 2005, 9:00 a.m., Supreme Court Courtroom, State Capitol

State of Minnesota, Respondent vs. Susan Rae Berkovitz, Appellant – Case No. A04-1722: On appeal from her convictions for first-degree murder and attempted first-degree murder, appellant Susan Berkovitz presents the following issue for review: whether she was denied her constitutional right to testify because her attorneys advised her that she would be convicted if she testified. (On appeal from Hennepin County District Court.)

Wednesday, September 7, 2005, 9:00 a.m., Supreme Court Courtroom, State Capitol

State of Minnesota, Respondent vs. Paul Penkaty, Sr., Appellant – Case No. A04-1315: On appeal from his conviction for first-degree murder, appellant Paul Penkaty presents the following issues for review: (1) whether the district court erred in denying Penkaty's motion to dismiss the indictment based on prosecutorial misconduct; (2) whether Penkaty is entitled to a new trial based on cumulative trial error; and (3) whether the state proved premeditation beyond a reasonable doubt. (On appeal from Watonwan County District Court.)

State of Minnesota, Respondent vs. Peggy Louise Burbach, Appellant – Case No. A04-1530: The district court dismissed all charges against appellant Peggy Burbach arising out of a traffic stop on the ground the officer did not have probable cause to search the vehicle for open bottles based on the odor alcohol emanating from the car. On a pretrial appeal by the state, the court of appeals reversed. The issue on appeal is whether the officer had probable cause to search the vehicle. (On appeal from Winona County District Court.)

Thursday, September 8, 9:00 a.m., Supreme Court Courtroom, State Capitol

State of Minnesota, Appellant vs. Dennis Gordon Lee, Respondent – Case No. A04-1402: Following respondent Dennis Lee's guilty plea to driving after revocation and failure to provide proof of insurance, the district court granted Lee's request for a stay of adjudication. The state filed a pretrial appeal challenging the district court's stay of adjudication. The court of appeals dismissed the appeal on the ground that the stay of adjudication could not be considered a pretrial order appealable by the state because the conditions of the stay included jail time. The issues on appeal are: (1) whether a stay of adjudication can be appealed by the state in a non-felony case; and (2) if so, whether a stay of adjudication conditioned on jail time is a sentence that cannot be appealed by the state in a non-felony case. (On appeal from Todd County District Court.)

State of Minnesota, Appellant vs. Duane Nathaniel Barker, Respondent – Case No. A04-1453: Respondent Duane Barker was charged with fifth-degree controlled substance crime. Barker agreed to a trial on stipulated facts and was convicted. The district court found beyond a reasonable doubt that Barker possessed a firearm during commission of the offense and sentenced respondent to 36 months, which was the mandatory minimum term based on commission of the offense while in possession of a firearm. The court of appeals reversed Barker's sentence, concluding that the mandatory minimum term functions the same as an aggravating factor under the sentencing

guidelines and therefore, under *Blakely v. Washington*, 124 S. Ct. 2531 (2004), the district court could not impose a mandatory minimum term longer than the guideline sentence without a jury's determination that respondent committed the offense while in possession of a firearm. The issues on appeal are: (1) whether the court of appeals erred in holding that a mandatory minimum sentence based on possession of a firearm while committing the offense must be based on facts found by a jury rather than the district court; and (2) whether Barker waived his right to have a jury determine whether he committed the offense while possessing a firearm. (On appeal from Hennepin County District Court.)

Monday September 12, 9:00 a.m., Courtroom 300, Minnesota Judicial Center

State of Minnesota, Respondent vs. Clinton T. Swanson, Appellant – Case No. A04-2130: On appeal from his conviction for first-degree murder, aiding and abetting kidnapping, terroristic threats, and false imprisonment, appellant Clinton Swanson presents the following issues for review: (1) whether the district court erred in failing to instruct the jury on the corroboration requirement for accomplice testimony; (2) whether the district court erred in permitting the state to impeach Swanson with prior convictions; (3) whether the prosecutor engaged in misconduct warranting a new trial; (4) whether the evidence was sufficient to support the conviction for aiding and abetting kidnapping; (5) whether the evidence was sufficient to support the conviction for first-degree murder; and (6) whether the imposition of consecutive sentences exaggerated the criminality of Swanson's conduct. (On appeal from Scott County District Court.)

NONORAL: State of Minnesota, Respondent vs. Charles Ellice Mems, Appellant – Case No. A04-1608: On appeal from his conviction for first-degree murder, pro se appellant Charles Mems raises issues regarding pretrial rulings, the fairness of his trial, and the sufficiency of the evidence. (On appeal from Hennepin County District Court.)

Tuesday, September 13, 2005, 9:00 a.m., Courtroom 300, Minnesota Judicial Center

Beverly Mumm, as Trustee for the Surviving Spouse and Next of Kin of Duane P. Mumm, decedent, Respondent vs. Geralyn E. Mornson, et al., Respondents vs. City of Minneapolis, et al., Appellants - Case No. A04-729:

Respondent Beverly Mumm brought a wrongful death action against respondent Geralyn Mornson who struck and killed the decedent while fleeing Minneapolis police officers in her car. Mornson filed a third-party complaint against the police officers and the City of Minneapolis, alleging that the police were negligent in engaging her in a chase where the police were attempting to stop her based on a report that she was suicidal and having a psychotic episode. The police officers moved for summary judgment based on qualified and official immunity. The district court denied the motion and the court of appeals affirmed. The issues on appeal are: (1) whether the district court erred in ruling that the police officers were not immune from suit under a theory of qualified immunity; and (2) whether the district court erred in ruling that the police officers were not immune from suit under a theory of official immunity. (On appeal from Hennepin County District Court.)

Kristin Thompson, Respondent vs. City of Minneapolis, et al., Appellants – Case No. A04-1050: Respondent Kristin Thompson was injured after she was struck by a motor vehicle being driven by a suspect attempting to evade Minneapolis police officers. Thompson sued the suspect and appellants, the City of Minneapolis and the police officers involved in the chase. The city and police officers moved for summary judgment based on official immunity and vicarious official immunity. The district court granted the motion but the court of appeals reversed. The issues on appeal are: (1) whether the police officers are protected under the theory of official immunity for their decisions about whether and how to pursue a suspect; and (2) whether the city has vicarious official

immunity for the acts of the police officers. (On appeal from Hennepin County District Court.)

Wednesday, September 14, 2005, 6:30 p.m., Room 221 William Mitchell College of Law

Arturo Camacho, et al., Appellants vs. Todd and Leiser Homes, Respondents
– **Case No. A04-599**: Appellants Arturo and Kristi Camacho sued respondents Todd and Leiser Homes for negligence and breach of the statutory new-home warranty. The Homes moved to dismiss on the grounds the claims were time-barred because they were filed more than two years after Homes' dissolved the corporation that constructed the Camacho's home. The district court denied the motion but the court of appeals reversed. The issue on appeal is whether the Camacho's statutory home warranty claims are barred by the two-year limitations period for claims against a dissolved corporation. (On appeal from Ramsey County District Court.)